

Appeal No. 2015AP2535-CR

Cir. Ct. No. 2014CF3338

WISCONSIN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ARTHUR ALLEN FREIBOTH,

DEFENDANT-APPELLANT.

FILED

FEB 26, 2018

Sheila T. Reiff
Clerk of Supreme Court

CERTIFICATION BY WISCONSIN COURT OF APPEALS

Before Sherman, Blanchard, and Kloppenburg, JJ.

Pursuant to RULE 809.61, STATS., we certify the present appeal to the Wisconsin Supreme Court to decide whether a defendant who was not advised at the time of the plea that he or she faced multiple mandatory DNA surcharges has grounds for plea withdrawal. This is the precise issue on which the Wisconsin Supreme Court previously accepted certification in *State v. Odom*, No. 2015AP2525-CR. However, the appellant in *Odom* has now voluntarily dismissed that appeal. The *Odom* certification presents a thorough discussion of the issue, which we do not repeat here.

We note that this court had over fifty cases on hold pending a decision in *Odom*, and that additional no-merit appeals with this issue arrive in this court each month. Therefore, resolution of the issue remains highly significant.

We appreciate that the Wisconsin Supreme Court is currently scheduled to hear two companion cases dealing with other DNA surcharge issues on March 16, 2018. We do not know if it is feasible on this timeline for this case to be added to that oral argument schedule. Either way, we believe that it is appropriate to certify this case to give the Wisconsin Supreme Court a vehicle to address this issue, either in isolation or along with the other pending cases involving DNA surcharge issues.

